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priorities of the creditors and of the judgment debtor's interest in the trust estate, determined what creditors were entitled to participate therein, found that partition could not be conveniently made, and that the rents would not satisfy the liens within five years, and that the other parties interested in the estate desired that one-eighth interest therein be allotted them upon paying its fair value, and decreed that they be permitted to do so by depositing the sum in a bank payable to the court, and appointed special commissioners to convey to such defendants such one-eighth interest in the trust estate, and required a report by the special commissioners as to how they had executed the decree. Held, that the decree was not final, so that defendants could file their answer, tendered at the following term of court, under Code 1904, § 3275, to the amended and supplemental bill, of which one the original bill was made a part.

[Ed. Note.—For other cases, see Equity, Cent. Dig. § 417; Dec. Dig. § 181.* 8 Va.-W. Va. Enc. Dig. 183, 191.]

Appeal from Hustings Court of Petersburg.

Action by J. W. Seward and others against Charles F. Collier and others. From a decree for plaintiffs, defendants appeal. Reversed and remanded, with directions.

The suit was instituted by judgment creditors for the purpose of subjecting to their liens the interest of a defendant in a testamentary trust estate.

E. P. Buford and *Willcox & Willcox*, for appellants.

Roper & Davis, *Chas. E. Plummer*, and *W. B. McIlwaine*, for appellees.

WHITLEY *v.* BOOKER BRICK CO.

March 14, 1912.

[74 S. E. 160.]

1. Judgment (§§ 178, 183*)—Summary Proceedings—Requisites.—A proceeding by motion, under Code 1904, § 3211, for judgment for a debt, is intended to furnish a simpler, more expeditious, and less expensive remedy for the collection of debts than by action, and an issue may be tendered by a plea, or by an informal statement in writing of the grounds of defense, unless otherwise required by statute.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. § 344; Dec. Dig. §§ 178, 183.* 10 Va.-W. Va. Enc. Dig. 126.]

2. Judgment (§ 183*)—Motion for Judgment—Defense—Remedy of Plaintiff.—The remedy of plaintiff, in a proceeding by motion, under Code 1904, § 3211, to recover a debt, who is not apprised of the na-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

ture of the defense, is by motion, under section 3249, for a statement of the grounds of defense.

[Ed. Note.—For other cases, see Judgment, Dec. Dig. § 183.* 10 Va.-W. Va. Enc. Dig. 129. 2 Va.-W. Va. Enc. Dig. 378.]

3. Payment (§ 63*)—Defenses—Issues—Plea of Non Assumpsit.—

A defendant, in a proceeding by motion to recover on an open account for goods sold and on a note, who pleads non assumpsit, may show a contract for the building of a structure by him for defendant, and the amount for the work, as a payment in part of plaintiff's demand, pursuant to an understanding of the parties that the amount due for the structure was to be a payment on the indebtedness of defendant to plaintiff.

[Ed. Note.—For other cases, see Payment, Cent. Dig. §§ 152-161; Dec. Dig. § 63;* Assumpsit, Action of, Cent. Dig. § 144. 2 Va.-W. Va. Enc. Dig. 46.]

4. Pleading (§ 261*)—Amendments—Allowance.—A defendant, in a proceeding by motion to recover on an open account and on a note, subject to partial payment, who admitted a part of the claim and pleaded non assumpsit as to the residue, should be permitted to amend, by alleging that he was entitled to a credit for work in erecting a building for plaintiff pursuant to contract therefor.

[Ed. Note.—For other cases, see Pleadings, Cent. Dig. §§ 794-800; Dec. Dig. § 261.* 1 Va.-W. Va. Enc. Dig. 348.]

5. Pleading (§ 239*)—Amendments—Continuance.—Where the court in its discretion allows amendments to a pleading in the interest of justice, the rights of the adverse party may be safeguarded by a postponement or continuance.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 626-635; Dec. Dig. § 239.* 3 Va.-W. Va. Enc. Dig. 273.]

Error to Corporation Court of Newport News.

Proceeding by motion by the Booker Brick Company against G. W. Whitley. There was a judgment for plaintiff, and defendant brings error. Reversed, and new trial granted.

Maryus Jones and T. J. Christian, for plaintiff in error.

J. Winston Read, for defendant in error.

WILLIAMSON *v.* SIMPSON.

March 14, 1912.

[74 S. E. 162.]

Error to Circuit Court of City of Norfolk.

Action by C. H. Simpson against W. C. L. Williamson. Judge

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